

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CERTAIN UNDERWRITERS	:	
AT LLOYDS, LONDON,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 98-199
	:	
GERALDINE HOROWITZ,	:	
HOME AMERICAN CREDIT, INC.	:	
d/b/a UPLAND MORTGAGE, and	:	
CITY OF COATESVILLE,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

DECEMBER 16, 1998

By Memorandum and Order of September 16, 1998, the Court granted the Motion for Summary Judgment of Home American Credit, Inc. d/b/a Upland Mortgage ("Upland") in this interpleader action. Geraldine Horowitz has now filed a "Motion to Vacate Order and Dismiss," contending that she never received notice of this action. Because the facts clearly indicate that Horowitz had notice of this case, her motion will be denied.

The background of this litigation was set forth in detail in this Court's Memorandum of September 16, and need not be reiterated at length. In summary, Horowitz granted a mortgage to Upland on certain property in Coatesville, Pennsylvania, on December 17, 1996. She also purchased property insurance on the mortgaged property from the Plaintiff, Lloyds of London ("Lloyds"). Shortly thereafter, Horowitz permitted the mortgage

to go into default. All payments subsequent to January of 1997 remain due and owing.

On July 25, 1997, a fire occurred at the property. The mortgage, in addition to requiring Horowitz to maintain fire insurance on the property, provided that Upland was entitled to any proceeds under the insurance policy. But Horowitz never notified Lloyds of Upland's interest in the proceeds, and sought to have payment made only to herself. After Upland notified Lloyds of its right to the proceeds, and Horowitz continued to dispute it, Lloyds filed this interpleader action.

After the fire at the mortgaged property, Horowitz took up residence in the United States Virgin Islands. She granted to Wendall H. Hall, her son, a power of attorney regarding her real and personal property located in the state of Pennsylvania. (See Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. to Vacate, Ex. J.) Lloyds attempted on multiple occasions to mail copies of the interpleader Complaint to Horowitz in the Virgin Islands, but all mailings were returned because Horowitz provided an incorrect address. (Id. at p. 2; Ex. I.) Hall, who is also an attorney, agreed to accept service on behalf of Horowitz. (Id., Ex. L.) After receiving a copy of the Complaint, Hall requested that Lloyds send him another copy. (Id.) After the Complaint was served upon him by certified mail, Hall never indicated that he did not receive the Complaint. Although he never entered an

appearance in this action, Hall communicated and negotiated with Lloyds and Home American on Horowitz's behalf throughout the interpleader litigation. (Upland's Br. in Opp'n to Horowitz's Mot. to Vacate at p. 1.) Thus, Hall, as Horowitz's attorney and personal representative, clearly had notice of this action.

In federal courts, original process may be served under either the Federal Rules of Civil Procedure or the law of the state in which the district court sits. Staudte v. Abrahams, 172 F.R.D. 155, 156 (E.D. Pa. 1997); FED. R. CIV. P. 4(e)(1). In Pennsylvania, "[i]f a rule of civil procedure authorizes original process to be served by mail, a copy of the process shall be mailed to the defendant by any form of mail requiring a receipt signed by the defendant or his authorized agent." PA. R. CIV. P. 403. The Pennsylvania Rules of Civil Procedure further provide for service by mail upon parties outside of Pennsylvania. PA. R. CIV. P. 404.

In this case, the power of attorney executed by Horowitz appoints Hall as her representative in this matter. The Complaint was then sent to Hall (who resides outside of Pennsylvania) by certified mail and Hall did not refuse it. See PA. R. CIV. P. 403(1) (providing that if the defendant refuses to accept the mail, the plaintiff may mail a copy by ordinary mail). Therefore, the Complaint was properly served upon Horowitz's representative.

Based upon the facts in this case, Horowitz has provided no reason why this Court should vacate its previous Order. Hall, Horowitz's appointed representative in this matter, agreed to accept service of the Complaint on her behalf, and continued to negotiate on her behalf throughout this litigation. Further, even had Hall not agreed to accept service on Horowitz's behalf, he was properly served with the Complaint. Thus, Horowitz's motion is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 16th day of December, 1998, upon
consideration of Defendant Geraldine Horowitz's Motion to Vacate
Order and Dismiss, and all responses thereto, it is hereby
ORDERED that said Motion is DENIED.

BY THE COURT:

Robert F. Kelly, J.